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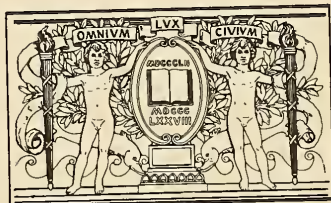
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COURT FINANCE REFORM FOR SUFFOLK COUNTY

I. INTRODUCTION

An improvement in the Commonwealth's present method of administering justice is long overdue. The deficiencies have been catalogued in the past and many sources have adversely criticized Massachusetts' performance. The appointment of the Governor's Select Committee on Judicial Needs is the most recent development in this area.

This report concentrates on a fundamental and long-standing deficiency in court administration: the inequitable and cumbersome method by which the Commonwealth finances its courts.

The present method of funding the judicial system is inefficient at best, and at its worst it leads to potential for great abuse. To the extent that court funding is administered by the individual counties, there is diffusion of accountability, opportunity for political input, and inequality of justice.

The Finance Commission proposes herein that the Commonwealth begin a gradual takeover of financial and administrative responsibilities for the Supreme Judicial Court, the Appeals Court, and the Superior Court. Although this report emphasizes present inequities in the system insofar as they affect the City of Boston and the County of Suffolk, the needs of all the counties and the state are taken into account in the Commission's recommendations for legislative change.

II. FULL STATE FUNDING OF THE STATE'S HIGHEST COURTS

Suffolk County currently provides over a half million dollars a year for salaries and other expenses of the Supreme Judicial Court and of the Appeals Court.¹ However, the activities funded by this expenditure are not solely or even primarily related to Suffolk County; they are entirely state judicial activities. The particular items and amounts budgeted in fiscal year 1976 by Suffolk County are:

Clerk and Assistant Clerks of the SJC for Suffolk County	\$99,000
Legal Assistants to Clerk of SJC for Suffolk County	60,000
Clerical Assistants to Clerk of SJC for Suffolk County	91,000
Administrative Assistant to the SJC (50% of salary)	11,000
Supreme Judicial Court Officers	71,000
SJC Masters and Auditors	35,000
SJC Miscellaneous expenses	18,000
Appeals Court Officers	143,000 ¹
Appeals Court Officers' Miscellaneous expenses	<u>3,000</u>
Total	\$531,000

Clerk of the Supreme Judicial Court for Suffolk County

There may have been a time when the Clerk of the Supreme Judicial Court for Suffolk County (as opposed to the Clerk of the SJC for the Commonwealth) actually performed functions primarily related to Suffolk County (see historical note on page 14). However, the suffix "for Suffolk County" is now an anachronism. The Suffolk County Clerk is now, in reality, the clerk for matters handled by single Supreme Court justices,² which are those matters not reserved to the full court. Thus the single justice session has no special relationship

¹The Commonwealth reimburses Boston for most of the salaries of Appeals Court Officers.

²Each Associate Justice of the Supreme Judicial Court sits in a single justice session for a month once every six months.

to the affairs of Suffolk County. In addition much of the work of single justices is involved in regulating the legal profession, i.e. accepting applications for admission to the bar and referring such applications to the Board of Bar Examiners, reviewing cases of attorneys charged with indiscretion, and incorporating attorneys. The Clerk of the SJC for Suffolk County and his assistants are responsible for recording and handling all information related to this work, including:

- Accepting and checking applications and fees for admission to the bar,

- Arranging for the swearing in of new lawyers and engraving and preparing their certificates,

- Maintaining and preparing records for the incorporation of attorneys,

- Maintaining records on all members of the bar, and

- Notifying the National Disciplinary Data Bank of the American Bar Association of any attorney guilty of the Code of Professional Ethics.

The single-justice sessions and the Clerk of the SJC for Suffolk County serve no unique Suffolk County function, yet Suffolk County bears almost the total cost. To add to this injustice, Suffolk County receives none of the fees collected for services provided. Registration fees for incorporation of attorneys (\$75) are paid to the Commonwealth through the Secretary of State's office, and no reimbursement is made to Suffolk County. While the great majority of the 2000 applications per year for admission to the bar come from outside Suffolk County (and out of state), the \$35 fees are handed over to the Commonwealth by the Clerk, and no reimbursement is made to Suffolk County.

Masters and Auditors

The SJC awards compensation to commissioners, assessors, referees, masters in chancery and special masters for duties performed under the direction of the court, and to arbitrators appointed for commercial disputes. This compensation is paid for by the county in which they are appointed. (G.L. c. 221, s. 55). Again, Boston pays a disproportionate share of costs.

Supreme Judicial Court Officers and Administrative Assistant to the SJC

Salaries and uniforms for court officers and one-half the salary of the administrative assistant to the SJC are paid for by Boston although both of these expenses are primarily related to the functioning of the full Supreme Judicial Court. The Court officers spend most of their time in attendance upon and reporting to the full court, and the administrative assistant to the SJC performs functions only for the full court.

Appeals Court

While most Appeals Court expenses are paid for directly by the Commonwealth Suffolk County pays the gross salary and miscellaneous expenses for the court officers. (Most of the cost of salaries is reimbursed by the Commonwealth).

Conclusion and Recommendations

Suffolk County expenditures for the Supreme Judicial and Appeals Courts provide for court functions which relate in no special way to Suffolk County. These expenditures seem to be in Boston's budget primarily because of custom. The Finance Commission believes that for Boston alone to pay for these activities is completely unfair and very possibly amounts to an unconstitutional denial of equal protection under the laws to the taxpayers of Boston.¹ Therefore, the Finance Commission recommends that the Commonwealth assume the full costs of the Supreme Judicial Court and that it make direct payment for all costs of the Appeals Court. The Finance Commission supports the passage of House Bill 1766 which would accomplish these changes. The Commission also proposes that G.L. c. 221 be amended to change the title of the Clerk of the SJC for Suffolk County to "Clerk of the SJC for Single Justice Sessions" and that such person be appointed by the Court beginning in 1982, or upon a vacancy in the office.

¹The Finance Commission will consider whether to initiate a suit to challenge the constitutionality of these and other laws which impose a disproportional burden of government expense upon Boston taxpayers.

III. REDUCTION OF INEQUITIES IN THE FINANCING OF SUPERIOR COURT

The total annual cost of Superior Court and related functions is approximately \$27.6 million of which \$6.8 million is paid by the state.¹ The remaining \$20.8 million is paid by the counties. However, the taxpayers of Boston pay much more than other Massachusetts taxpayers for Superior Court. Boston (Suffolk County) pays 32% of the remaining total although it has only 11% of the populace² and 5% of the property value³ (Suffolk County has 13% and 6% respectively). Thus Boston pays approximately \$10 per capita for costs associated with Superior Court while the rest of the Commonwealth pays only \$3 per capita.

Civil Caseload

One of the reasons for the disparity in costs is the much greater civil workload in Suffolk County than in other counties. Twenty-five percent of all Superior Court civil cases are entered in Suffolk County, or twice what would be expected on a per capita basis. In other counties the civil caseload is less than 90% of what would thus be expected on this basis. (See graph on following page). In order to determine the reasons for this disparity, the Finance Commission sampled 300 civil cases pending in Suffolk County Superior Court.⁴ The sample showed:

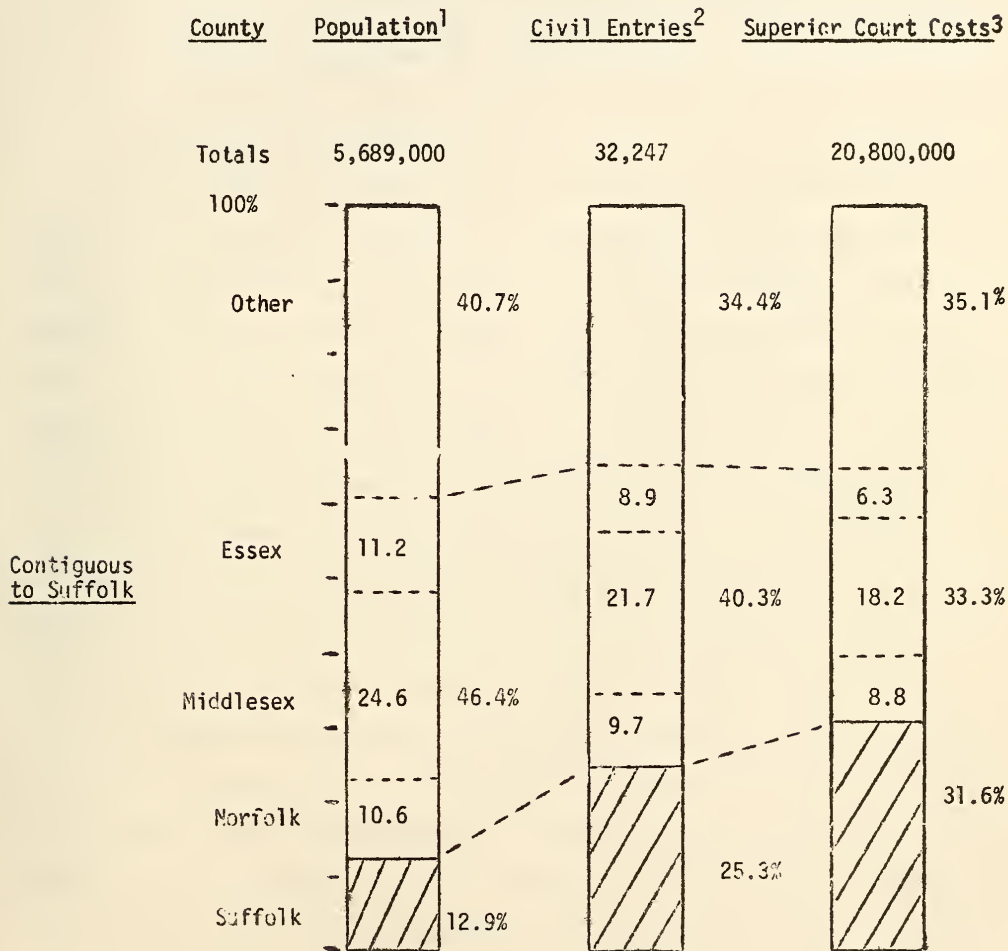
¹Includes costs for court clerks, district attorneys' offices, the probation service, and general Superior Court expenses (from fiscal year 1976 budgets).

²From 1970 Federal census.

³As reported by the State Tax Commission on January 1, 1975.

⁴Approximately 100 civil cases pending in Middlesex County were also sampled for purposes of comparison.

Graph I Population, Superior Court Civil Caseload, and County Superior Court Costs - Percentages of Total by County.



¹From 1970 Federal census.

²From statistics compiled by the Executive Secretary of the Supreme Judicial Court for fiscal year 1975.

³Total of fiscal year 1976 county budgets for clerks of courts and Superior Court. A breakdown into civil and criminal costs has not been attempted.

1. 12% of cases include the Commonwealth as a party.
2. 4% of cases involve tax-exempt organizations, eg. hospitals and universities.
3. 7% of cases concern disputes occurring in Chelsea, Revere or Winthrop
4. 45% of cases relate directly to Boston business activity (although often only one of the parties is a Boston business). Review of court papers indicates that one-sixth of these cases concern activities which take place primarily outside the city.
5. The remainder is made up of accident and personal injury cases (26%) and miscellaneous cases (6%).

The first three of these findings indicate part of the reason for the considerable discrepancy in Superior Court costs between Boston and other cities and towns; that is, Boston carries a large share of costs for non-taxpaying parties. Nearly one-quarter of all Suffolk County Superior Court civil cases include parties who pay no Boston taxes (Commonwealth 12%, Chelsea, Revere, and Winthrop 7%; and tax-exempt 4%). These costs are substantial and are highly disproportionately borne by Boston. Since the principal offices of state government are located in Boston, most civil cases in which the Commonwealth is a party are tried in Suffolk County.¹ Also Boston has a relatively much higher concentration of tax-exempt organizations than other cities and towns. More than one-half of Boston property is tax-exempt versus a state-wide average of approximately one quarter. Finally, no other locality bears the full cost of court activity (and all other county costs for that matter) for other cities and towns. Boston pays all county costs for Chelsea, Revere, and Winthrop. For Boston alone to bear the major burden of Superior Court costs for the Commonwealth, for tax-exempt institutions, and for Chelsea, Revere and Winthrop, is highly inequitable since Boston receives no corresponding tax or economic benefits.

¹This is confirmed by a review of the cases handled by the Attorney General's office. General Laws c. 223, s.5 permits the Commonwealth, in any civil case in which it is a plaintiff to commence the action in Suffolk County.

Unfortunately, the inequity in taxes to pay for the Superior Court does not end with civil cases concerning non-taxpaying parties. Almost one-half of civil cases in Suffolk County Superior Court concern Boston corporations or private business activity. While Boston pays most of the public court costs associated with this activity, the city does not receive a proportional share of either tax or economic benefits associated with that activity. While corporations and private concerns do pay property taxes, such taxes are only a small percentage of total business taxes. Nor do property taxes necessarily reflect relative amounts of business activity and the resulting need for court services, especially considering the trend towards labor intensive service industries. Concerning other economic benefits (which might tend to offset the impact of relatively higher court costs), it is doubtful that Boston receives more than a proportional share (eg. of jobs).

To make matters worse, it appears that Boston may actually be a net "importer" of cases into its Superior Court. For many civil cases there is a choice of venue, i.e. where the case may be brought, and it seems that Suffolk County Superior Court is chosen relatively more often than the courts of outlying counties. Eight percent of the cases sampled concern activities which take place primarily outside the city; however, these cases were brought in Suffolk County because of a Boston presence (eg. a downtown office) of one of the parties. There are a number of possible explanations for relatively more cases being brought in Suffolk County than elsewhere (eg. convenience to downtown corporate or law offices) but no matter what the reason, if such net importation exists, there is no corresponding dollar benefit which accompanies that importation. Boston pays the bill.

Criminal Caseload

In addition to the civil caseload, the disproportionately high cost of Suffolk County Superior Court can be attributed to its relatively greater criminal caseload. While Suffolk County has 12.9% of the state populace, it has 21.3% of the total criminal cases entered in its Superior Court.¹ This caseload reflects Boston's crime rate (22.4% of the total number of serious crimes in the state are committed in Boston).² No attempt is made here to analyze the causes of Boston's crime rate. Whatever the causes are, however, it is clear that they are not confined to the borders of any one municipality, and it is therefore inequitable to leave to Boston taxpayers the burden of paying for the disproportionately large criminal caseload of Suffolk County Superior Court.

Conclusions and Recommendations Concerning Superior Court

Boston bears a highly inequitable share of costs related to the Superior Court and the Finance Commission believes Boston should be relieved of this burden. One obvious way to do this would be for the state to take over all county costs for the Superior Court (approximately \$21 million annually). Unfortunately this solution is not likely to be adopted since it would cause a minor shock to the state budget. Therefore an alternative approach is proposed which provides for gradual state assumption of costs but immediate state assumption of budgetary responsibility. Specifically, the Finance Commission recommends that the state assume all gross costs of the Superior Court, the district attorneys, Superior Court probation offices, and county clerks of courts, but that counties be assessed for a share of these costs. The assessment would be 90% of actual fiscal year 1976 expenses and, if possible, it would be reduced 10% per year. The net increase in cost to the

¹From statistics compiled by the Executive Secretary of the Supreme Judicial Court for fiscal year 1975.

²From 1974 FBI Uniform Crime Reports.

state of this proposal would be \$2.1 million rather than an increase of \$20.8 million for total takeover. (See Columns 1 through 3 of the table on the following page).

In addition, since Boston pays such a highly inequitable share of Superior Court costs, it should be provided quicker relief than that provided for by the proposed ten-year state takeover of costs. Therefore, the Finance Commission also recommends that an additional reduction be made in the assessment of those counties for which the proposed assessment is greater than that which would be made on the basis of equalized property valuations. If the proposed assessment of \$18.7 million were borne by the counties on the basis of property values, neither Suffolk nor Hampden Counties would pay as much as their proposed assessment. The "excess" assessment on Hampden County would be \$217 thousand, and on Suffolk County it would be an extraordinary \$4.8 million. Since it is probably not politically feasible to have this entire "excess" deducted from the 90% assessment, it is suggested that a reasonable percentage of this excess should be deducted. The table on the following page shows the result of a reduction in the proposed assessment of 20% of this "excess." The total cost to the Commonwealth of this additional reduction in county costs would be \$1 million. Even with this further reduction in costs, Boston would still pay over three times as much per capita as other cities and towns for Superior Court. Of course, if, in the future, Boston's equalized property valuation is increased relative to other cities and towns, the benefit to Boston of this additional recommendation would decrease.

Table I. Impact on Counties of Partial State Take-Over of Superior Court Costs (1st year)
(Dollars in Thousands)

County	(1) Superior Court Costs to be Assumed by the State (FY 76)	(2) Assessment on Counties for 90% of of FY 76 costs	(3) Benefit to County (1) - (2)	(4) Property Valuation Assessment ¹	(5) "Excess" Assessment (2) - (4)	(6) Additional Benefit to County (20% of "Excess")
Barnstable	\$ 382	\$ 344	\$ 38	\$ 269	\$	\$
Berkshire	551	496	55	515		
Bristol	1,430	1,287	143	1,307		
Dukes	39	35	4	101		
Essex	1,308	1,177	131	2,168		
Franklin	257	231	26	264		
Hampden	1,622	1,460	162	1,243	217	43
Hampshire	387	348	39	356		
Middlesex	3,789	3,410	379	4,933		
Nantucket	34	31	3	66		
Norfolk	1,829	1,646	183	2,406		
Plymouth	973	876	97	1,324		
Suffolk	6,571	5,914	657	1,104	4,810	962
Worcester	1,630	1,467	163	1,666		
TOTAL	\$20,800	\$18,720	\$2,080	\$18,720	\$5,027	\$1,005

¹County's share of a \$18,720,000 assessment based upon equalized property valuations as reported by the State Tax Commission on January 1, 1975.



IV. CHELSEA, REVERE AND WINTHROP ASSUME A FAIR SHARE OF DISTRICT COURT COSTS

Since 1821 Boston has borne the full cost of all Suffolk County costs while Chelsea, Revere and Winthrop have been required to pay none of these costs. This arrangement was made in exchange for Boston's control of county administration, and in 1821 it allowed for a significant reform in county government at nominal cost to the City of Boston. (See historical note on page 14). In those days Chelsea (which also included what is now Revere and Winthrop) made up only 1.2% of the population and .4% of the property valuation of Suffolk County. In 1830 Chelsea's share of taxes would have amounted to less than \$100 out of a total of \$15,338.

However, conditions have obviously changed in over a century and a half. Chelsea, Revere and Winthrop now make up a significant proportion of Suffolk County both in terms of population (12.7%) and property valuation (19.5%). In response to these changes, a number of efforts have been made over the years to enact legislation requiring Chelsea, Revere and Winthrop to pay their full share of Suffolk County costs. Not surprisingly these efforts have all failed.¹

In addition to political considerations, such legislation should have failed because it would be just as unfair for Chelsea, Revere and Winthrop to pay a full share of all Suffolk County costs as it is for Boston to pay for all such costs. Therefore, the Finance Commission recommends that, rather than require Chelsea, Revere and Winthrop to pay a full share of all Suffolk County costs, legislation be passed to require those localities to pay for costs fully attributable to them, in particular for the costs of the district courts serving them. This legislation could include provisions for a gradual shifting of these costs.

¹In 1910 the Legislature did pass a Resolve which empowered the SJC to apportion Suffolk County costs between Boston, Chelsea, Revere and Winthrop, but the resolve was never given effect because the SJC declared it to be an unconstitutional delegation to the judiciary of a legislative function. See Resolve 1910, c. 109, amended St. 1911 c. 482 City of Boston v. City of Chelsea, 212 Mass. 127 (1912).

CONCLUSION

If there was ever a time when Boston could afford to pay for more than its share of state and regional public expenses it is long gone. As this Report has documented, Boston's taxpayers are being forced to pay for far more than their just proportion of state and county court costs. This unfair burden can best be eliminated, and the present system of financing court administration can best be simplified and reformed, by having the Commonwealth assume the full costs of the SJC, the Appeals Court, and the Superior Court. Moreover, within Suffolk County, Chelsea, Revere and Winthrop should pay the costs of their own district courts.

The plight of the court system and the City are inextricably linked with the future of the Commonwealth. Not only is the health of the state greatly dependent upon the health of its largest urban center, but also the state can be no stronger than the system of justice which it provides.

Respectfully submitted,

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THE FINANCE COMMISSION

Historical Notes

1. Between 1831 and 1855 the Supreme Judicial Court appointed county clerks who acted as clerks for the SJC in their respective counties, but in 1855 Article XIX of the Amendments to the Massachusetts Constitution provided for the election of county clerks. Chapter 173 of the Acts of 1856 provided for three separately elected clerks for Suffolk County, one each for the SJC, the Superior Court and the Municipal Court. Chapter 176 of the Acts of 1859 established the SJC-appointed position of Clerk of the SJC for the Commonwealth and also continued the position of Clerk of the SJC for Suffolk County as an elective office.

2. From at least 1691 counties were governed by a Court of Sessions, the functions of which were later taken over in most counties by county commissioners. These courts exercised executive and ministerial, as well as judicial, powers. Suffolk County, consisting of Boston and Chelsea (which included what is now Revere and Winthrop), operated as did the other counties until 1821. In that year popular feeling ran strongly against the Court of Sessions and a petition was filed to abolish that court and make Boston a separate county. This petition was opposed by the inhabitants of Chelsea. The controversy was resolved by the passage of Chapters 109 and 110 of the Acts of 1821 which abolished the Court of Sessions and gave its duties to Boston city government, continued Boston and Chelsea as Suffolk County, and exempted Chelsea from county taxation.

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